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ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF CALIFORNIA.[2]

COURT OF ERRORS AND APPEALS OF DELAWARE.[3]

SUPREME JUDICIAL COURT OF MAINE.[4]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]

SUPREME COURT OF MICHIGAN.[6]

SUPREME COURT OF NEW HAMPSHIRE.[7]

COURT OF CHANCERY OF NEW JERSEY.[8]

SUPREME COURT OF NORTH CAROLINA.[9]

SUPREME COURT OF PENNSYLVANIA.[10]

SUPREME COURT OF SOUTH CAROLINA.[11]

SUPREME COURT OF TEXAS.[12]

SUPREME COURT OF APPEALS OF VIRGINIA.[13]

SUPREME COURT OF WISCONSIN.[14]

ACTIONS. See *Association.*

ARBITRATION. See *Contract.*

ASSIGNMENT. See *Banks and Banking.*

For Benefit of Creditors—Preference—Attorney's Fee—Concealment of Assets—Demurrer.—A provision in an assignment for the benefit of creditors, directing the payment of a reasonable fee to the lawyer who prepared the assignment for his services, is not an unlawful preference: *Verner* v. *Davis,* 24 or 25 S. C.

Nor is the fact that the assignor has concealed a portion of his assets alone sufficient to justify setting aside the assignment: *Id.*

But while a bill to set aside the assignment would have been demurrable had it contained only the charge of the unlawful preference of the lawyer, and the concealing of assets, yet as it further charged that "the assignment was pretensive, illegal and void, and that the assignee had abandoned his trust," the demurrer was properly overruled: *Id.*

ASSOCIATIONS.

Actions—Equity—Trial before Committee—Waiver—Effect of Error.

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[1] To appear in 121 U. S. Rep.

[2] To appear in 67 or 68 Cal. Rep.

[3] To appear in 6 or 7 Houston.

[4] To appear in 79 or 80 Me. Rep.

[5] To appear in 143 or 144 Mass. Rep.

[6] To appear in 59 or 60 Mich. Rep.

[7] To appear in 64 or 65 N. H. Rep.

[8] To appear in 42 or 43 N. J. Eq. Rep.

[9] To appear in 95 or 96 N. C. Rep.

[10] To appear in 114 or 115 Pa. St. Rep.

[11] To appear in 24 or 25 S. C. Rep.

[12] To appear in 66 or 67 Tex. Rep.

[13] To appear in 66 or 67 Wis. Rep.

[14] To appear in 81 or 82 Va. Rep.

—A court of equity has jurisdiction of causes of action, within the control of the tribunals ordained by the constitution and by-laws of an unincorporated society, only where some material irregularity in the proceedings is shown to have occurred which has not been waived by the suitor: *Appeal of Sperry*, 114 or 115 Pa.

On the trial of a member of a lodge before a committee, an irregularity in the appointment of the committee, under the by-laws, is waived by the appearance of the accused, who having knowledge of the irregularity does not object thereto: *Id.*

The exclusion of a competent witness, offered by the accused, on the ground that he is incompetent, is a mistake of judgment, and not an irregularity of procedure, the omission to complain of which, on appeal to the lodge, is a waiver of such error: *Id.*

GREEN and TRUNKEY, JJ., dissenting.

ASSUMPSIT. See *Evidence.*

ATTORNEY'S FEE. See *Assignment.*

BANKS AND BANKING.

Taxation—What is Taxable—Bank Stock.—Under Rev. St. Tex., art. 4682, exempting corporation stock from taxation against the owner when the capital and property of the corporation are required to be taxed, the owner of stock in a state bank is not taxable therewith while the property of the bank is, under the law taxable, although the bank does not return its property for taxation, as it should do: *Gillespie* v. *Gaston*, 66 or 67 Tex.

Banking Dividends—Surplus Profits.—A savings bank cannot appropriate and pay as a dividend to its stockholders and depositors on the profits arising from its business, any portion of the interest upon its loans or investments that may have matured or accrued, but which have not been actually collected and received in money. Money earned as interest, however well secured or certain to be eventually paid, cannot in fact be distributed as dividends to stockholders, and does not constitute surplus profits within the meaning of the statute: *The People* v. *San Francisco Savings Union*, 67 or 68 Cal.

Trusts—Assignment for Benefit of Creditors—Proof of Claim—Dividend.—A. sold land to B. and forwarded the deed and abstract of title to a banker to be delivered to B. on payment of $2000, which was to be immediately remitted to him. The banker delivered the deed to B. on payment by him of four $100 bills, and certain certificates of deposit which the banker had previously issued to him and others. The banker failed the same night, and before the $2000 had been remitted to A. *Held*, that it was a fraud on A. for the banker to receive certificates instead of cash, and that the assets in the hands of his assignee were impressed with a trust in favor of A. to the extent of $2000, and that his claim for that amount should be paid in preference to all other claims: *Francis* v. *Evans*, 66 or 67 Wis.

In such a case the fact that the creditor has proved his claim before the assignee and received a dividend thereon, will not affect his right to recover the whole amount due him, less such dividend, in an action against the assignee: *Id.*

Taxation on Shares of Stock—"Moneyed Capital"—Rev. Stat. U. S. § 5219—Discrimination—Bonds of Municipal Corporations.—The main purpose of Congress in fixing limits to state taxation on investments in shares of National Banks was, to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business, and operations and investments of like character: *Mercantile Bank* v. *N. Y.*, 121 U. S.

The term, "moneyed capital," as used in Rev. Stat. § 5219, respecting state taxation of shares in national banks, embraces capital employed in National Banks, and capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money—as in banking, as that business is defined in the opinion of the court; but it does not include moneyed capital in the hands of a corporation, even if its business be such as to make its shares moneyed capital when in the hands of individuals, or if it invests its capital in securities payable in money: *Id.*

The mode of taxation adopted by the state of New York in reference to its corporations, excluding trust companies and savings banks, does not operate in such a way as to make the tax assessed upon shares of national banks at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens: *Id.*

Although trust companies created under the laws of New York, are not banks in the commercial sense of the word, shares in such companies are moneyed capital in the hands of individuals: but as these companies are taxed upon the value of their capital stock, with deductions on account of property in which it is invested, either otherwise taxed or not taxable, and are additionally taxed upon their income, by way of franchise tax, it does not appear that the rate of taxation thus imposed by the laws of New York is less than that upon shares in national banks: *Id.*

Deposits in savings banks are exempted from state taxation, for just reasons, and, as the exemption does not operate as an unfriendly discrimination against investments in national bank shares, it cannot affect the rule for the taxation of the latter: *Id.*

The amount of bonds of the city of New York, which are exempt from taxation under state laws, is too small, as compared with the whole amount of personal property and credits which are the subject of taxation, to affect, under Rev. Stat., § 5219, the validity of the assessment: *Id.*

The bonds of municipal corporations are not within the rule established by Congress for the taxation of national banks: *Id.*

COMMON CARRIER. See *Contract.*

CONTRACT.

For Arbitration—Validity.—An agreement in a deed that if any controversy arise between the parties it shall be settled by an arbiter, is invalid, as courts cannot be ousted of their jurisdiction by such agreements: *Dugan* v. *Thomas*, 79 or 80 Me.

Validity—Gaming—Illegal Purpose—Participation.—If money is lent with the mere knowledge or belief on the part of the lender that

it is to be used for gambling purposes, and without any participation on his part in the illegal act, an action cannot be maintained for its recovery: *Tyler* v. *Carlisle*, 79 or 80 Me.

Even if the lender participates in the purposes of the borrower, he may recover the money of the borrower, if demanded before it has been actually used. In minor offences the *locus pœnitentiæ* continues until the execution of the illegal act: *Id.*

Master and Servant—Implied Assent.—The plaintiff, an employee of the defendant, demanded an increase of wages to commence January 1st 1885, and gave due notice to defendant's agent that he would leave unless such increase was made. The agent promised to give an answer in two or three days, but failed to do so for several months, allowing the plaintiff in the meanwhile to continue work. Thereupon plaintiff was told that his salary would be increased as demanded, but to commence May 1st 1885: *Held*, that the silence of the agent did not raise the implication of assent on the part of the defendant, and that plaintiff was not entitled to the increase for the time from January 1st to May 1st 1885: *Raysor* v. *Berkeley Co. Ry. & Lumber Co.*, 24 or 25 S. C.

Breach of — Damages — Waiver of Claim — Carriers —Powers—Affreightment of Vessels.—The Shippers' Compress Company entered into a contract with the Virginia & Tennessee Air Line, an association composed of the Norfolk & Western Railroad Company and other corporations, by which the latter agreed to fill with cotton a certain amount of room on board the steamers Liscard and Linhope, at the port of Norfolk, said cotton to be placed on board on the 18th and 19th of October 1881, on which dates the steamers were to be loaded and made ready to sail for Liverpool. The cotton was not delivered until several days after the time agreed upon, and, in consequence of the delay, the Shippers' Compress Company was, by the terms of its charter-party, compelled to pay a large sum for demurrage, after having given the proper agent of the Virginia & Tennessee Air Line repeated and timely notice of the consequences which would result from its failure to deliver the cotton in time: *Held*, that the subsequent acceptance of the cotton by the compress company was not a waiver of the stipulation as to time, and that it could recover the amount of demurrage so paid in an action against the Air Line: *Norfolk & W. R. Co.* v. *Shippers' Compress Co.*, 81 or 82 Va.

Such a contract, made by a railroad corporation engaged in the business of transporting merchandise, is not *ultra vires*, but properly incidental to the purposes of its charter: *Id.*

CORPORATIONS.

Insolvency—Realization of Association.—Where the receiver of an insolvent corporation has realized on all the assets except certain stocks, bonds and real estate, which are for the time unmerchantable, and if forced upon the market would be sacrificed, the court may, in view of the desirability of closing the trust, direct the securities to be sold at public auction, after full notice to all persons interested, at an upset price, and in proper lots or parcels to invite buyers: *In re Newark Savings Inst.*, 42 or 43 N. J. Eq.

COVENANTS.

Implied—Quiet Enjoyment—Party-Wall—Rent—The statutory right common to all owners of real estate in Philadelphia, to use division walls as party-walls, does not constitute a breach of the covenant of quiet enjoyment implied in a lease; and if a leased dwelling-house in Philadelphia is rendered uninhabitable by the adjoining proprietor exercising his right to pull down and rebuild the party-wall, such fact will constitute no defence to an action for the rent: *Barns* v. *Wilson*, 114 or 115 Pa.

CRIMINAL LAW.

Sentence—Escape—Arrest.—Notwithstanding Code Del., p. 795, provides that, "when imprisonment is part of the sentence, the term shall be fixed, and its commencement and ending specified," a prisoner who escapes before his time is served, and remains at large until his term is up, is liable to arrest for the purpose of carrying his sentence into effect. Such a case is governed by the maxim, *nullus commodum capere potest de injuria sua propria: McCoy* v. *State*, 6 or 7 Houston.

DAMAGES. See *Contract.*

DEED. See *Evidence.*

DELIVERY. See *Gift.*

DEMURRER. See *Assignment.*

DOWER.

Right to—Receipt of Purchase Price—Recoupment.—A married woman joined her husband in the execution of a bond, without her privy examination, for title to land to be made upon payment of the purchase-money. The purchaser executed notes to the husband for the purchase-money, and delivered them to the wife, who received their value, but who afterwards repudiated and disaffirmed her obligation, and claimed dower. *Held*, that if the widow elects to claim dower, the purchaser would have a right to such damages as he may sustain thereby: *Hodge* v. *Powell*, 95 or 96 N. C.

EASEMENT. See *Waters and Watercourses.*

EQUITY. See *Associations.*

EVIDENCE.

Assumpsit—Sealed Instrument.—In assumpsit against a partnership a sealed agreement executed by one of the partners, offered, not to prove the contract, but merely to show the value of the goods, by showing what defendant had agreed to pay, is admissible in evidence: *Gallagher* v. *Strobridge Lithographing Co*, 114 or 115 Pa.

Extrinsic—Deed.—In construing a deed of land, the description in which is doubtful, the evidence competent to be considered is the language of the deed, and the surrounding circumstances at the time of its execution, including the situation of the parties, and the object they had in view: *Elliott* v. *Gilchrist*, 64 or 65 N. H.

Executors and Administrators.

Waste—Co-Executors—Joint Receipt.—W., one of two executors, is not rendered liable for the *devastavit* of N., his co-executor, by the fact that he joined in the receipt given for the money wasted, where, with respect to that part of the estate, no express trust duties were enjoined by the will, and W., before consenting to the exercise of sole control over the fund by N., took the advice of counsel upon the subject, and exacted of N. an acknowledgment of his sole liability, which he had no reason to doubt was good because of N.'s financial responsibility : *Wilson's Appeal*, 114 or 115 Pa.

Forcible Entry and Detainer.

What Constitutes Forcible Entry.—The testimony of a prosecutor, in part corroborated by his wife, that he found defendants standing on his property clearing a ditch that separated it from the adjoining premises, and that upon his ordering them to leave they chased him to within a short distance of his house, is sufficient to warrant a verdict of guilty of forcible entry : *State* v. *Talbot*, 95 or 96 N. C.

Gaming. See *Contract.*

Gift.

Inter Vivos—Delivery.—A gift of personal property from father to son, to be valid, must be accompanied by delivery. And the delivery must be actual, so far as the subject of the gift, in its nature, is capable of delivery : *Medlock* v. *Powell*, 95 or 96 N. C.

In an action to recover possession of a mule, the evidence showed that plaintiff's father had said to him he might have a colt if he would raise it. After that, plaintiff claimed the colt, but it remained with his father's horses, and was fed with them. The father, with the consent of the plaintiff, exchanged the colt for the mule in controversy. The plaintiff claimed it, and used it when he saw fit, and also received hire for it. The father left home, and took the mule with him, and kept it for several years. Testimony was given that the father had stated to several persons that the mule was his son's, and that members of the family understood that it belonged to him. *Held*, that there was no evidence to show delivery, and that the plaintiff could not recover : *Id.*

Husband and Wife. See *Witness.*

Injunction. See *Waste.*

Insolvency. See *Corporation.*

Insurance.

Life—Insurable Interest.—A., an old woman, was living with her daughter and B., the father of her son-in-law. B. had A.'s life insured ; his only interest being, as stated in the application, "has kept her for a certain length of time, and promises to keep her as long as she lives." After the death of A., her executor attempted to recover the amount of the policy from B., less the amounts paid by him. The court, on the trial, refused to charge the jury, as matter of law, that the insurance was speculative. *Held* not be error : *Batdorf v. Fehler*, 114 or 115 Pa.

Life—Transfer of Policy—Trust.—A policy of insurance was issued upon the life of A., for the benefit of A.'s mother, who, together with A.'s sister, furnished the money to pay the first premium. A., at the time the policy was issued, was unmarried. After several premiums had been paid A., who had in the mean time married, surrendered the policy, (which had been in his possession all the time, although he had shown it to his mother, and told her that it had been taken out for her benefit,) and without the knowledge of A.'s mother a new one was issued, payable to A.'s wife, it being stated that the new policy was a continuation of the old one. Under the terms of the policy, after two full premiums had been paid, certain valuable rights under it accrued to the person for whose benefit it had been taken out. *Held*, upon the death of A., that a trust had been created in favor of the mother, and that A. not having reserved a power of revocation in the first policy, a transfer to the wife could not be made without the consent of the mother: *Pingrey* v. *National Life Ins. Co.*, 143 or 144 Mass.

Life—Death by Act of Third Person—Unlawful Act.—U., a minor who had enlisted, deserted from the army, and was shot by an under-sheriff, who attempted to arrest him. There was a conflict of evidence on the point as to whether the officer knew at the time of the shooting that the party shot was the deserter, and also as to whether the killing was in self-defence. *Held* that, if the officer did not know that the person he fired at was U., and did not intend to kill U., it could not be said, as matter of law, that U. lost his life by the design of the officer, within the meaning of an accident policy insuring U., which provided that "the insurance should not extend to any case of death or personal injury unless the claimant establish, by direct and positive proof, that the death or injury was caused by external violence and accidental means, and was not the result of design, either on the part of deceased, or any other person," and that the case should be submitted to the jury: *Utter* v. *Travellers' Ins. Co.*, 59 or 60 Mich.

Where a person who is insured deserts from the army, and is shot by a sheriff, who is attempting to arrest him, as alleged in self-defence, it cannot be held, as matter of law, that he was engaged in an unlawful act, within the meaning of a policy of accident insurance, providing that no claim shall be made "when the death or injury may have happened * * * while engaged in or in consequence of any unlawful act:" *Id.*

LANDLORD AND TENANT. See *Covenants.*

MASTER AND SERVANT. See *Contracts.*

MORTGAGE. See *Waste.*

Chattel — Foreclosure — Pleading — Receiver—Sale.—A motion to strike out a bill to foreclose a chattel mortgage cannot be sustained on the ground of want of proper parties, if the notice does not point out who should be made parties; nor on the ground that the goods and chattels are not properly described, when many of the goods are particularly described; nor on the ground that the bill includes goods not included in the mortgage, that being matter of evidence; nor because the bill does not describe all the goods now in defendant's store, the bill only asking to foreclose the equity of redemption of the goods which are described: *Howell* v. *Frances*, 42 or 43 N. J. Eq.

A receiver appointed in a suit to foreclose a chattel mortgage, *held* properly ordered to sell horses claimed to be included in the mortgage as perishable property: *Id.*

Release of—Setting Aside.—The release of a mortgage, in consideration of the mortgagor's quit claim deed of the land, may be set aside when the deed does not include all the land mortgaged, and the mortgagee was deceived in supposing it did without fault on his part: *Elliott* v. *Gilchrist*, 64 or 65 N. H.

MUNICIPAL CORPORATION. See *Banks and Banking.*

NUISANCE.

Party who Perpetrates is Responsible.—A. created a nuisance on certain premises, and then demised the same to B. Thereafter, C., (defendant), with full knowledge of the nuisance and of the tenancy, purchased the reversion, and received the rent from the tenant, who attorned to it, and during this state of things plaintiff sustained the damage for which he had verdict and judgment. *Held*, he, who, with full knowledge of the existence of a nuisance upon real estate for which the owner would be liable, purchases the reversionary interest in such real estate, and receives the rents thereof from the tenants in possession, thereby voluntarily assumes the responsibility of such nuisance, and becomes liable for the damages sustained in consequence thereof, subsequent to his purchase: *Rievee* v. *German Savings and Loan Society*, 67 or 68 Cal.

PRIVILEGED COMMUNICATION. See *Witness.*

RAILROADS.

Negligence—Contributory—Railroad Crossing—Evidence—Duty of Traveller—Duty of Company—Signals—Speed—Train behind Time—View of Track—Obstructions.—The plaintiff's intestate was killed by a train of the defendant while crossing the tracks over the main street in a village of about 4000 inhabitants. At the time of the accident he was driving slowly in a democrat wagon, drawn by a mule which was so slow and lazy that it was a common practice to joke about the mule, and tell his driver to whip up. When about to cross, persons who saw the train coming called to the decedent to whip up, but it did not appear that he understood that the train was approaching. The decedent looked and listened as he drew near the crossing, but did not stop. The train that killed him was two hours late, and was running from twenty-five to forty miles an hour. There was no flagman at the crossing, and the view was obstructed by coal-bunkers and standing freight cars. There was a preponderance of evidence for the plaintiff that no bell was rung or whistle sounded. *Held*, that the decedent was not guilty of contributory negligence and could recover: *Guggenheim* v. *Lake Shore & M. S. Rd.*, 59 or 60 Mich.

Where it is the custom of a daily train to sound a whistle and ring a bell when approaching a certain street crossing, a person driving in a wagon along the street, two hours after the schedule time of the train, is not bound, because the track at the crossing is obstructed so that he cannot see beyond, to get down from his vehicle, and go to a point where

he can see before driving over the crossing: if he looks and listens carefully, that is all that can be required of him under such circumstances: *Id.*

The absence of a statute regulating the speed of trains, and of an ordinance requiring them to give signals of their approach to a street crossing, does not exempt the railroad company from due care with respect to speed, and from the duty of giving warning, either by bell, whistle, or both, or by some other means, where the street crossed is the main thoroughfare of a village of 4000 inhabitants, and where the view of travellers on the street is obstructed by buildings and standing freight cars near the crossing: *Id.*

It is not negligence *per se* for a train to be behind time; but the fact that it is off time increases and heightens the duties resting upon the company to give such additional warnings of its approach to a street crossing as will enable persons in the street, who are not aware that it is off time, opportunity to guard against the danger more carefully than they would from regular trains, running on schedule time: *Id.*

While a railroad company is not guilty of negligence in leaving its freight cars standing on a side track near a street crossing, yet when they are so placed as to cut off the view of approaching trains, and make it more difficult for persons going over the tracks to see the approach of trains, such placing of the cars imposes upon it the additional duty of giving such additional warning as the danger thus increased may require: *Id.*

RECOUPMENT. See *Dower.*

STATUTE. See *Banks and Banking.*

TAX. See *Banks and Banking.*

TRUSTS. See *Banks and Banking; Insurance.*

Use of Funds by Trustee—Right of Beneficiary.—A husband who was trustee of his wife's separate estate used a large part of the funds to erect a row of tenement houses on a city lot owned by himself. He then executed a "declaration of trust;" reciting the facts and the advisability of substituting the property for the trust funds, and setting out that the lot with the buildings thereon were held by him under the trust. The houses were destroyed by fire. From the material left the trustee erected a house for his wife and himself, which they occupied until his death, and which the widow used afterwards as her home. The trustee died insolvent: *Held*, in a suit by a creditor of the husband to subject the house and lot to his debt, that the investment was unauthorized, that the trust fund could be followed; and that the beneficiary having elected to take the property instead of a charge upon it, it was her property, and not that of the trustee: *Brazel* v. *Fair*, 25 or 26 S. C.

WAIVER. See *Associations; Contract.*

WASTE. See *Executors and Administrators.*

Mortgage—Digging up and Selling Soil—Injunction.—A. filed a bill in equity alleging that he had sold certain land to B., taking a mortgage for the whole of the purchase-money; that the understanding between

the parties was that the land was to be sold out in lots for building purposes; that, instead of doing so, B. was selling the soil of the land, and had opened sand and stone quarries, and was disposing of the sand and stone thereon; that, by reason of this waste, the security of his mortgage was lessened; and prayed for an injunction to stay this waste. A. supported the allegations of his bill by numerous affidavits. B., in counter affidavits, alleged that he was not quarrying the land with the intention of committing waste, but that he was merely grading the same, in order to make it more suitable to dispose of in building lots. The court, having found the facts as alleged by A., granted the injunction; *Held*, on the facts so found, there was no error in the decree: *Martin's Appeal*, 114 or 115 Pa.

WATERS AND WATERCOURSES.

Riparian Rights—Artificial Channel.—The owner of lands upon which there was a lagoon, from which there was no natural outlet, cut a ditch for irrigating purposes. Thereafter he conveyed part of the land upon which the lagoon was situated to the defendants. He conveyed the remainder of his lands to the plaintiffs. The irrigating ditch ran between the different tracts conveyed. By parol permission of their grantor (the defendants), the plaintiffs had used the waste waters of the ditch: *Held*, that the water never having flowed in any natural channel, the plaintiffs never acquired any riparian rights in the flow of water in the ditch: *Green* v. *Carotto*, 67 or 68 Cal.

Sea Shore—Right to Fish.—An action of tort cannot be maintained for passing over the shore and flats, below high-water mark, for the purpose of fishing, and for fishing therefrom, where the shore has not been enclosed by the proprietor, and the defendant has not created any permanent obstruction: *Packer* v. *Ryder*, 143 or 144 Mass.

Easement—Mill-Dam.—A. purchased a mill property knowing that to operate the mill profitably he would have to increase the water-power, and proceeded to acquire rights from various land-owners whose lands would be overflowed by raising his dam, but made no agreement for payment of damages with B., whose lands were seriously damaged by the increased overflow. B. knew of the raising of the dam, and that his land would be overflowed, but did not know to what extent it would be damaged, and he made no objection, and allowed his minor sons to work for A. in making the improvement. Subsequently B. sought to enjoin A. from raising the water higher than in the old dam, and to compel him to reduce the height of the new dam: *Held*, that while B. was entitled to compensation for the damages sustained by him, he was not entitled to the relief asked, because of his own acquiescence in the raising of the dam, and failure to object thereto: *Blake* v. *Cornwell*, 59 or 60 Mich.

WITNESS.

Privileged Communication—Husband and Wife.—A divorced wife cannot testify to confidential communications between her and her husband made during the existence of the marriage relation: *Brock* v. *Brock*, 114 or 115 Pa.